

9011/SHV

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

07 CV 6602 (PKL)

CANTONE & CO., INC.,

Plaintiff,

- against -

SEAFRIGO a/k/a SEAFRIGO  
MARSEILLE,

Defendant.

ANSWER

Defendant, SEAFRIGO MARSEILLE, by its attorneys, Cichanowicz Callan Keane Vengrow & Textor, LLP, for its answer to the complaint, alleges on information and belief:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 1.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 2.
3. Denies the truth of the allegations of para. 3.
4. Denies the truth of the allegations of para. 4.
5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 5.
6. Denies the truth of the allegations of para. 6.
7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 7.
8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 8.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 9.

10. Denies the truth of the allegations of para. 10.

11. Denies the truth of the allegations of para. 11.

12. Denies the truth of the allegations of para. 12.

13. Denies the truth of the allegations of para. 13.

14. Denies the truth of the allegations of para. 14 except admits nonpayment.

15. Denies the truth of the allegations of para. 15.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 16

#### FIRST AFFIRMATIVE DEFENSE

17. This Court lacks jurisdiction over defendant's person.

#### SECOND AFFIRMATIVE DEFENSE

18. Defendant has not been served with a summons herein, and no summons issued in this action would be sufficient to compel defendant's appearance since this Court lacks both general and specific jurisdiction over defendant's person.

#### THIRD AFFIRMATIVE DEFENSE

19. Pursuant to F.R.Civ.P. Admiralty & Maritime Supplemental Rule E(8), defendant's appearance in this action is restricted to the defense of the claims herein for which plaintiff has obtained attachment or garnishment of defendant's property, and in any event is not

an appearance for the purposes of any other claim with respect to which such process is not available or has not been served.

#### FOURTH AFFIRMATIVE DEFENSE

20. The Rule B attachment and garnishment herein is invalid, and the circumstances of the said attachment and garnishment show a want of equity warranting its vacation.

#### FIFTH AFFIRMATIVE DEFENSE

21. The complaint pleads a claim arising out of a bill of lading contract for the carriage of goods by sea from a foreign port to a U.S. port issued by defendant as common carrier. If those allegations are true, then the rights and obligations of the parties are subject to the U.S. Carriage of Goods by Sea Act and the bill of lading. This defendant claims the benefit of all applicable laws, contracts and tariffs.

#### SIXTH AFFIRMATIVE DEFENSE

22. Defendant claims the benefit of any forum selection or choice of forum provision contained in the applicable contracts.

#### SEVENTH AFFIRMATIVE DEFENSE

23. This action should be dismissed on grounds of forum non conveniens.

EIGHTH AFFIRMATIVE DEFENSE

24. The cargo loss and damage complained of occurred, if at all, as a result of the inherent vice or defect or pre-existing condition of the goods, or as a result of the fault or neglect of plaintiff or those for whom plaintiff is responsible.

NINTH AFFIRMATIVE DEFENSE

25. Plaintiff did not mitigate its damages.

WHEREFORE, defendant, SEAFRIGO MARESEILLE, respectfully requests the following relief:

- A. Judgment dismissing the complaint and awarding defendant the costs and disbursements of this action; and
- B. An order vacating plaintiff Rule B attachment and garnishment and granting defendant all damages caused by plaintiff's wrongful attachment and garnishment.

Dated: New York, NY, August 24, 2007

CICHANOWICZ, CALLAN, KEANE,  
VENGROW & TEXTOR, LLP  
Attorneys for Defendant  
SEAFRIGO MARSEILLE

By: Stephen H. Vengrow  
Stephen H. Vengrow (SHV-3479)  
61 Broadway, Suite 3000  
New York, New York 10006-2802  
(212)344-7042

TO: Opposing Counsel

**CERTIFICATE OF SERVICE BY REGULAR U.S. MAIL AND BY ECF**

The undersigned declares under penalty of perjury that the following is true and correct:

1. I am over the age of eighteen years and I am not a party to this action.

2. On August 24, 2007, I served a complete copy of Seafrigo's Answer to Plaintiff's Complaint, by regular U.S. mail and by ECF, to the following attorneys at their ECF registered address and at the following address:

To: Kevin John Lennon  
Lennon, Murphy & Lennon, LLC  
The GrayBar Building  
420 Lexington Avenue  
Suite 300  
New York, NY 10170  
(212) 490-6050  
Fax: (212) 490-6070  
Email: [kjl@lenmur.com](mailto:kjl@lenmur.com)

\_\_\_\_\_  
s/ Jessica De Vivo

Jessica De Vivo

DATED: August 24, 2007  
New York, New York